


L. 2. 1989-17

An Introduction To Franchising In Alberta For Franchisors

Alberta
SECURITIES COMMISSION

8536-303



Digitized by the Internet Archive
in 2017 with funding from
University of Alberta Libraries

TABLE OF CONTENTS

CANADIANA

NOV 16 1988

PAGE

PURPOSE OF THIS BOOKLET	1
THE FRANCHISES ACT	1
What is a Franchise?	1
Franchise Rights	1
Franchise Fee	2
Terminology and Language	2
Registration	2
Exemptions from Registration	3
Statutory Exemption	3
Discretionary Exemption	4
Enforcement	4
Offences and Penalties	4
REFERENCE MATERIALS	5
FILING PROCEDURES	5
Review of Applications	5
Full, True and Plain Disclosure	6
Financial and Operational Responsibility	6
Responding to Staff Comments	6
Confirmation of Registration or Exemption from Registration	7
FILING REQUIREMENTS	7
Application for Registration	7
Application for Renewal of Registration	9
Application for Statutory Exemption	11
Application for Discretionary Exemption	12
American Franchisors	12
Incomplete Applications	13
OTHER ASSISTANCE AVAILABLE FROM THE ALBERTA SECURITIES COMMISSION	14
Commission Staff	14
Commission Library	14
Franchise Prospectuses	14
Commission Mailing Address	14

TABLE OF CONTENTS

1	THE FINCHES ACT
2	What is a Finch?
3	Finch's Rights
4	Finch's Law
5	Finch's Language
6	Finch's Religion
7	Finch's Education
8	Finch's Employment
9	Finch's Health
10	Finch's Family
11	Finch's Property
12	Finch's Transportation
13	Finch's Recreation
14	Finch's Social Services
15	Finch's International Relations
16	Finch's Miscellaneous
17	Finch's Appendix
18	Finch's Glossary
19	Finch's Index
20	Finch's Bibliography
21	Finch's Acknowledgments
22	Finch's About the Author
23	Finch's Copyright
24	Finch's Disclaimer
25	Finch's Contact Information
26	Finch's Privacy Policy
27	Finch's Terms of Service
28	Finch's Frequently Asked Questions
29	Finch's Feedback
30	Finch's Updates
31	Finch's News
32	Finch's Events
33	Finch's Partners
34	Finch's Sponsors
35	Finch's Donors
36	Finch's Volunteers
37	Finch's Advisory Board
38	Finch's Board of Directors
39	Finch's Officers
40	Finch's Committees
41	Finch's Committees
42	Finch's Committees
43	Finch's Committees
44	Finch's Committees
45	Finch's Committees
46	Finch's Committees
47	Finch's Committees
48	Finch's Committees
49	Finch's Committees
50	Finch's Committees
51	Finch's Committees
52	Finch's Committees
53	Finch's Committees
54	Finch's Committees
55	Finch's Committees
56	Finch's Committees
57	Finch's Committees
58	Finch's Committees
59	Finch's Committees
60	Finch's Committees
61	Finch's Committees
62	Finch's Committees
63	Finch's Committees
64	Finch's Committees
65	Finch's Committees
66	Finch's Committees
67	Finch's Committees
68	Finch's Committees
69	Finch's Committees
70	Finch's Committees
71	Finch's Committees
72	Finch's Committees
73	Finch's Committees
74	Finch's Committees
75	Finch's Committees
76	Finch's Committees
77	Finch's Committees
78	Finch's Committees
79	Finch's Committees
80	Finch's Committees
81	Finch's Committees
82	Finch's Committees
83	Finch's Committees
84	Finch's Committees
85	Finch's Committees
86	Finch's Committees
87	Finch's Committees
88	Finch's Committees
89	Finch's Committees
90	Finch's Committees
91	Finch's Committees
92	Finch's Committees
93	Finch's Committees
94	Finch's Committees
95	Finch's Committees
96	Finch's Committees
97	Finch's Committees
98	Finch's Committees
99	Finch's Committees
100	Finch's Committees

PURPOSE OF THIS BOOKLET

The purpose of this booklet is to provide some general information on franchise legislation in the Province of Alberta and the filing requirements and procedures of the Alberta Securities Commission, (referred to in this booklet as the "Commission") which administers the Alberta Franchises Act.

It is not intended to be a comprehensive text on franchise law; such texts are available in many public libraries. Nor is it intended to be a substitute for the kind of detailed professional advice you will need from lawyers, accountants, and others on particular aspects relating to your franchise application. This booklet answers general questions commonly asked by franchisors interested in franchising in Alberta.

THE FRANCHISES ACT

The Franchises Act regulates the trading in franchises in the Province of Alberta. The legislation requires a franchisor to register with the Commission and to provide a prospective franchisee with the information required to make an informed investment decision. The Act applies to persons and companies trading (selling) franchises or doing anything in furtherance of a trade.

What is a franchise?

In general terms, a franchise is defined as an agreement between two or more persons, by which a franchisee is required to pay, directly or indirectly, a franchise fee as defined in section 1(1)(h) of the Act in consideration for any of five rights listed in section 1(1)(f) of the Act.

Franchise Rights

The first requirement of a franchise is the granting of one or more of the following five rights:

Directed by Franchisor

The right to engage in a business of selling goods manufactured, processed, or distributed, or the services organized and directed by the franchisor.

Market Plan

The right to engage in a business of selling or distributing any goods or services under a marketing plan or system prescribed or controlled by the franchisor.

Trade Name

The right to engage in a business which is associated with the franchisor's trademark, service mark, trade name, logo, advertising or

any business symbol designated by the franchisor or its associate.

Reliant on Franchisor

The right to engage in a business in which the franchisee is reliant on the franchisor for the continued supply of goods and services.

Recruit Others

The right to engage in a business in which the franchisee has the right to recruit additional franchisees.

Contracts or arrangements between manufacturers, or if the franchisor is the Crown, Crown agency or a municipal corporation, are excluded from the definition of a franchise.

Franchise Fee

The second requirement is that a franchise fee be paid for the granting of one or more of the above franchise rights.

A franchise fee includes any consideration exchanged or agreed to be exchanged directly or indirectly for the granting of the franchise. Examples of direct franchise fees are the initial fees and ongoing royalties charged by a franchisor. An indirect franchise fee would exist in circumstances where the franchisee is required to purchase goods or services at prices above the current wholesale market rate.

Terminology and Language

The terminology or language used in an agreement may not necessarily have a bearing on whether or not the arrangement is a franchise, that is, the substance of the agreement as compared to the form of the agreement may be the determining factor as to whether an agreement is a franchise. Therefore, license agreements, distributor agreements, joint ventures, partnerships or any other type of arrangement which meets the criteria in sections 1(1)(f) and 1(1)(h) of the Act may be a franchise for purposes of the Franchises Act.

Registration

Section 6 of the Act requires the franchisor to file an application for registration and a franchise prospectus with the Commission and obtain a registration receipt before trading in franchises in the Province of Alberta. Therefore, a franchisor must be registered before promoting or advertising its franchise in Alberta. The franchise prospectus is a disclosure document containing all material facts relating to the franchise and must be accompanied by a certificate signed by the Chief Executive Officer, the Chief Financial Officer and two Directors of the franchisor.

The prospectus has three basic parts:

Disclosure Document

This document contains, among other things:

- a brief history of the franchisor and its directors,
- a summary of the obligations of the franchisee and franchisor, and its directors,
- a summary of the assistance provided by the franchisor.

Financial Statements

The franchisor's current audited financial statements must be attached to and form part of the prospectus. If the audited financial statements were prepared as at a date more than 120 days from the date of filing the prospectus, the franchisor must also attach to the prospectus unaudited interim financial statements prepared within 90 days of the date of the prospectus. In some circumstances the Director of the Commission may waive the requirement to file unaudited interim financial statements, if there has been no material adverse change in the financial affairs of the franchisor and if the applicant agrees to a limited registration period of less than a year. The Director will normally establish a renewal date which will avoid the problem of stale dated financial statements in future years.

Franchise Agreement

A copy of the franchise agreement for use in the Province of Alberta must be attached to and form part of the prospectus. Any secondary agreements such as personal guarantees of registered trademark user agreements must also be attached to and form part of the prospectus.

Refer to page 7 of this booklet for additional details, on filing requirements.

Exemptions from Registration

Some franchisors may be exempted from the above registration requirements. The Act provides for certain statutory and discretionary relief from registration.

Statutory Exemption

Section 2 of the Act exempts franchisors from the registration requirements if:

- the franchisor has a net worth of more than \$5,000,000 and at least 25 franchisees, conducting business at all times during the 5 year period immediately preceeding the trade, or
- the franchisor has a net worth of \$1,000,000 and is at least 80% owned by a corporation which meets the above requirements.

Franchisors exempted from the prospectus requirements of section 6 of the Act must file with the Commission a Statement of Material Facts which is a disclosure document requiring the answers to 25 specific questions

regarding the franchise. Refer to section 5 of the Act for additional details.

No franchisor who claims an exemption under section 2 shall trade in a franchise until the franchisor has obtained an acknowledgement of the exemption under section 2 from the Director of the Commission.

Discretionary Exemption

The Director of the Commission may make an order pursuant to Section 3 of the Act exempting a trade in a franchise from the registration requirements, if he is satisfied that doing so would not be prejudicial to the public interest. The franchisor must demonstrate, to the satisfaction of the Director, that the prospective franchisee does not require a prospectus to assist in making the investment decision. This "need-to-know" principle will determine to what extent the Director provides relief from the registration requirements. When granting the exemption, the Director may impose conditions requiring the franchisor to provide a Statement of Material Facts or restricting the trades in some other manner.

Relevant factors in assessing section 3 applications for exemptions include:

- familiarity of the franchisee with the franchisor's operations (e.g. former long-term employee),
- the amount of the franchisee's investment in time and money, and
- past performance of the franchisor.

Franchisors should review Alberta Securities Commission Policy 4-02, "Section 3 Applications", for a more complete discussion of the requirements in applying for a discretionary exemption.

Enforcement

Franchisors cannot trade in a franchise until registered with the Commission. Therefore, franchisors must refrain from advertising or soliciting until they finalize their registration. Registration is confirmed when the Registrar of the Commission issues a receipt for the prospectus.

Offences and Penalties

Any person who:

- makes a false or misleading statement in an application, prospectus, financial statement or other document filed under the Franchises Act,
- contravenes the Franchises Act or Regulations, or
- fails to comply with an order, ruling, direction or other requirement under the Franchises Act or Regulation,

is guilty of an offence and liable to:

- a maximum fine of \$2,000 or imprisonment of one year, or both, or
- in the case of a company, a maximum fine of \$25,000.

No person is guilty of making a false or misleading statement if he establishes that he did not know the statement was false or misleading and, in the exercise of reasonable diligence, would not have known that the statement was false or misleading.

REFERENCE MATERIALS

To assist you in preparing your application, the following materials accompany this brochure:

- The Franchises Act and Regulations
- Alberta Securities Commission Policy 4-01 "Maintenance of Books and Records"
- Alberta Securities Commission Policy 4-02 "Section 3 Application"
- Sample Franchise Prospectus
- Sample Statement of Material Facts
- Forms
 - Application for Registration - Form 1
 - Application for Registration as a Salesman - Form 5
 - Certificate of Intended Employer - Form 6

FILING PROCEDURES

Review of Applications

Commission staff review applications for registration, or exemption from registration, and issue their comments usually within 10 business days of receiving the applications.

The review of the application for registration has two primary purposes:

- to ensure that the prospectus complies with legislative requirements for full, true, and plain disclosure, and
- to identify those situations where it is not in the public interest to grant registration. The two most common concerns in this regard are the franchisor's financial position and business experience.

Full, True and Plain Disclosure

If the disclosure appears to the staff of the Commission to be incomplete, inconsistent or unclear, the franchisor must either revise the prospectus or provide acceptable clarification.

Financial and Operational Responsibility

A franchisor must demonstrate sufficient financial resources and business experience to provide the goods and services outlined in the prospectus. The Director will not register a franchisor if it appears that the financial position or business experience of the franchisor is inadequate in relation to the goods and services described in the prospectus. Franchisors unable to demonstrate financial or operational responsibility may be able to resolve such concerns by doing one or more of the following:

- Obtaining additional capital by way of either share capital or a subordinated loan.
- Placing the initial franchise fee in trust. Release of the funds from trust is subject to the consent of the Director of the Commission. The Director will consent to the release of the funds when the franchisor has demonstrated to the satisfaction of the Director that it has provided the franchisee with the initial goods and services as set out in the franchise agreement.
- Obtaining an unconditional guarantee of the franchisor's obligations from a parent or affiliate of the franchisor. The guarantee shall form part of the franchise agreement. In addition, the guarantor must sign the prospectus and attach its audited financial statements to the prospectus.
- Registering an affiliated company which can better demonstrate an ability to fulfill the obligations to the franchisees. (e.g. registering a parent company instead of a subsidiary).
- Operating company owned stores in order to develop an operating history.

Whether any one or a combination of the above will resolve concerns about financial or operational responsibility depends on the circumstances of a particular application. The staff of the Commission does not, however, consider placing franchise fees in trust or providing a guarantee to be an acceptable solution in cases which the franchisors have only nominal share capital or lack business experience.

Responding to Staff Comments

The Commission staff will review applications and provide the franchisor with written comments within approximately 10 business days of receiving the application. Franchisors are required to provide written responses to the staff's comments.

When all comments and concerns have been resolved, the franchisor will be

asked to file a revised prospectus. The prospectus shall be manually signed as of a current date. Photocopied signatures are not acceptable.

The relevant financial statements and franchise agreements should be bound into the final prospectus. The required consent letters which make reference to the date of the final prospectus must accompany the final prospectus. The financial statements and consent letters shall be manually signed. Photocopied signatures are not acceptable.

Confirmation of Registration or Exemption from Registration

Registration or exemption from registration is acknowledged by the Commission issuing:

- a formal receipt for section 6 registration,
- an acknowledgment of the franchisor's section 2 statutory exemption, or
- an order pursuant to section 3.

The Director of the Commission determines the period, normally one year, of registration or exemption from registration.

FILING REQUIREMENTS

Application for Registration

The following material is required to be filed with an application for registration pursuant to section 6 of the Act:

Franchise Prospectus

A prospectus shall provide full, plain and true disclosure of all material facts relating to the franchise being offered. The prospectus shall comply as to form and content with the requirements of the Act and Regulations. (A sample prospectus accompanies this booklet.) The prospectus must be manually signed and dated as of a current date. Photocopied signatures are not acceptable.

Franchise Agreement

A copy of the franchise agreement for use in Alberta and any secondary agreement must be bound into the prospectus.

Financial Statements

The prospectus shall contain the franchisor's financial statements. The financial statements shall be:

- bound into the prospectus and referenced in the body of the prospectus (refer to item 11 of the sample prospectus),

- prepared in accordance with generally accepted accounting principles,
- audited by an independent Chartered Accountant,
- prepared as of a date within 120 days of the date of the filing of the prospectus,
- accompanied by unaudited interim financial statements if the audited financial statement were not prepared as of a date within a 120 days of the filing of the prospectus. The unaudited financial statements must be reviewed by the company's auditor in accordance with section 7100 of the Canadian Institute of Chartered Accountants Handbook and be accompanied by a comfort letter signed by the auditor.

On application, the Director of the Commission may waive the requirement to file unaudited statements if there has been no material adverse change in the financial affairs of the franchisor and the franchisor agrees to a short registration period.

Form 1

Application for registration.

Filing fee of \$250

Fee to be made payable to the Provincial Treasurer.

Consent letter(s)

Auditor's

- in accordance with section 7100 of the Canadian Institute of Chartered Accountants Handbook.

Others

- as required by section 10 of the Franchises Act.

Board of Directors Resolution

A certified copy of the Resolution of the Board of Directors authorizing the filing and signing of the financial statements and the prospectus.

Application for Registration of Salesmen

At least one salesman must be registered to sell the franchise in Alberta.

Forms 5 & 6 must be filed by all trading representatives. Please ensure the required references accompany the application.

Filing fee of \$50 for each salesman. Fee to be made payable to the Provincial Treasurer.

Directors of the Franchisor

Each Director must file a Form 5.

Directors who are not salesmen need not provide reference letters.

Cross reference sheet

A sheet showing the location in the prospectus of the information required to be included by the form. Reference shall be made on the sheet of those items which are inapplicable or negative and have been omitted from the prospectus.

Extra-Provincial Registration

Corporations not incorporated in Alberta must provide a copy of the certificate of extra-provincial registration.

Surety Bond

A surety bond (in the format set out in Form 8 to the regulations) will be required in an amount to be determined by the Director if the franchisor does not have any assets in Alberta.

Operations Manual

Franchisors should submit one copy of their Operations Manual for confidential review by Commission staff. This review is to ensure that the prospectus adequately describes the extent to which the franchise system has been developed. These manuals will be returned to the franchisor after the staff's review.

Application for Renewal of Registration

The following material is required to be filed with an application for renewal of registration pursuant to Section 6 and 19 of the Act:

Franchise Prospectus

The prospectus must be manually signed and dated as of a current date. Photocopied signatures are not acceptable.

Franchise Agreement

A copy of the franchise agreement for use in Alberta and any secondary agreement must be bound into the prospectus.

Financial Statements

The prospectus shall contain the franchisor's financial statements. The financial statements shall be:

- bound into the prospectus and referenced in the body of the prospectus,
- prepared in accordance with generally accepted accounting principles,
- audited by an independent Chartered Accountant,
- prepared as of a date within 120 days of the date of the filing of the prospectus,
- accompanied by unaudited interim financial statements if the audited financial statement were not prepared as of a date within 120 days of the filing of the prospectus. The unaudited financial statements must be reviewed by the company's auditor in accordance with section 7100 of the Canadian Institute of Chartered Accountants Handbook and be accompanied by a comfort letter signed by the auditor.

On application, the Director of the Commission may waive the requirement to file unaudited statements if there has been no material adverse change in the financial affairs of the franchisor and the franchisor agrees to a short registration period.

Form 2 Application for Renewal of Registration

One fully signed copy.

Filing Fee of \$250

Fee to be made payable to the Provincial Treasurer.

Consent Letter(s)

Auditors's

- in accordance with section 7100 of the Canadian Institute of Chartered Accountants Handbook.

Others

- as required by section 10 of the Franchises Act.

Board of Directors Resolution

A certified copy of the resolution of the Board of Directors authorizing the filing and signing of the financial statements and the prospectus.

Application for Renewal of Registration of Salesmen

Form 7 must be filed for each salesman.

A filing fee of \$50 made payable to the Provincial Treasurer for each salesman.

Cross Reference Sheet

A sheet showing the location in the prospectus of the information required to be included by the form. Reference shall be made on the sheet of those items which are inapplicable or negative and have been omitted from the prospectus.

Red-lined Prospectus

To assist in the processing of a renewal application an extra copy of the complete prospectus may be filed. This extra copy is marked to show the sections which have been added to the preceding prospectus including agreements and marked to show deletions, additions and other changes from the preceding prospectus.

Application for Statutory Exemption

The following material is required to be filed to obtain an acknowledgment for a section 2 statutory exemption:

Statement of Material Facts

A Statement of Material Facts containing the information requested in section 5 of the Act and prepared in the format of the accompanying sample.

Eligibility Opinion

An opinion from the auditors or senior officers of the franchisor confirming the eligibility of the franchisor under section 2(b) of the Act.

Financial Statements

Audited financial statements as of a current date.

Board of Directors, Resolution

A certified copy of the Board of Directors Resolution authorizing the filing and signing of the Statement of Material Facts and the financial statements.

Filing Fee of \$10

Fee to be made payable to the Provincial Treasurer.

NOTE: Registration of a salesman is not a requirement with a section 2 exemption.

Application for a Discretionary Exemption

The material accompanying a section 3 application must be in the format prescribed by Alberta Securities Commission Policy 4-02. In general terms, an applicant is required to file the following:

Covering Letter

- setting out the exemption requested and the reason for the exemption,
- providing information about the franchisor, such as name, history of the business,
- describing all criminal convictions, civil actions, and bankruptcy or receivership proceedings, if any, which the franchisor has been involved or, if none, containing a statement to that effect.

Franchise Agreement

Copy of the franchise agreement the two parties propose to enter into.

Affidavit from the Franchisee

Demonstrating

- historic business association with the franchisor,
- knowledge of the particular franchise and franchisor, and
- any other basis for requesting the exemption.

Describing

- previous experience with offerings of this type
- the advice received on this investment from a lawyer, chartered accountant, or others.

Filing Fee of \$100

Fee to be made payable to the Provincial Treasurer.

Statement of Material Facts

- where appropriate.

American Franchisors

American franchisors applying for registration pursuant to section 6 of the Act are required to file a prospectus. We suggest that the disclosures contained in the Uniform Franchise Offering Circular prepared pursuant to the North American Securities Administration requirements and guidelines form the foundation for an Alberta prospectus. At a minimum the following revisions are required:

Attach a face page as required by section 8 of the Regulations identifying the document as a prospectus.

Disclose Alberta Statutory rights of withdrawal and rescission.

Disclose which country's currency is applicable and the exchange rate as of the date of the prospectus.

State in the franchise agreement that Alberta Law shall govern the business arrangement.

Add any additional information determined by the franchisor and its legal advisors to render the disclosure full, true and plain.

Attach manually signed certificate of full, true and plain disclosure in accordance with section 9 of the Act. Photocopies are not acceptable. This certificate must appear at the end of the prospectus.

American franchisors must file all other material described in the Filing Requirement section of this booklet.

American franchisors filing for an exemption pursuant to section 2 of the Act are required to file a Statement of Material Facts. Where the franchisor has a Uniform Franchise Offering Circular (UFOC) it may be used as a foundation of the Statement of Material Facts. A face page, Alberta Statutory rights, the currency applicable, and a certificate are required. The certificate for a statement of material facts verifies that the disclosure made is true.

The financial statements which form part of the UFOC must be manually signed and there must be obtained a consent letter from the auditors in accordance with section 7100 of the Canadian Institute of Chartered Accountants.

Incomplete Applications

Applications are initially reviewed by the Registrar of the Commission to determine whether or not they are substantially complete. Applications which are:

- unsigned,
- not accompanied by required audited financial statements, or
- not accompanied by the required filing fee

will be returned to the franchisor. The franchisor may re-submit the application when it is complete.

OTHER ASSISTANCE AVAILABLE FROM THE ALBERTA SECURITIES COMMISSION (ASC)

Commission Staff

Commission staff will respond to enquiries of a general nature regarding a particular aspect of the legislation, but the staff does not, provide legal opinions as to whether or not a particular arrangement is a franchise.

Commission Library

The Commission library in Edmonton has a variety of reference materials available for review.

Franchise Prospectus

Franchise prospectuses and statements of material facts filed with the Commission are available for viewing in the Commission's Edmonton offices for a fee of \$2 per file. Copies of a prospectus may be purchased for a fee of 50¢ per page.

Commission Mailing Address

Applications and enquiries should be addressed to:

Alberta Securities Commission
Franchise Section
21st Floor, 10025 Jasper Avenue
Edmonton, Alberta
Canada
T5J 3Z5

Attention: Deputy Director, Franchises

Telephone (403) 427-5201

APPENDIX A

4 The fees that are payable to the Commission are as follows:

- 1. upon application for registration of a franchise
or area franchise.....\$500
- 2. upon application for renewal of a registration of a
franchise or area franchise\$500
- 3. upon application for registration as a salesman
on behalf of a franchisor or sub-franchisor\$300
- 4. upon application for renewal of a registration
as a salesman.....\$300
- 5. upon an application for amended registration in all cases\$100
- 6. upon application for exemption under section 3 of the Act\$300
- 7. upon application for renewal of an exemption granted
under section 3 of the Act.....\$300
- 8. upon a hearing or review in relation to an application
for a registration or renewal of a registration\$25
- 9(1) unless the Commission otherwise directs, for an
examination by the Commission or its representative
under section 41 of the Act of the financial affairs
of any person registered under the Act or any person
whose franchise or area franchise has been the subject
of a filing with the Commission, a rate per day per
auditor of \$1,000
- 9(2) Notwithstanding subsection (1), in the case of a
limited or minor examination, the fee prescribed
under subsection (1) may be reduced to reflect
the cost of the examination.
- 10. upon all other filings not specifically referred to\$300
- 11. for a search of the file\$5
- 12. for copies of documents on file in the public files
of the Commission, for each page\$2

N.L.C. - B.N.C.



3 3286 08536308 9